



Agenda Date: 12/5/03

Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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ENERGY

IN THE MATTER OF AMENDMENT TO THE)	DECISION AND ORDER
THIRD PARTY SUPPLIER AGREEMENT)	DOCKET NO. EX03030185
APPROVAL OF AMENDMENT TO THE)	
CREDITWORTHINESS REQUIREMENTS IN THE)	
TPS AGREEMENT AND THE WELCOME/)	
RESCISSION LETTERS; AND MOTION FOR)	
RECONSIDERATION BY STRATEGIC)	
ENERGY, L.L.C.)	

(Service List Attached)

BY THE BOARD:

By Order dated August 17, 1999, the Board of Public Utilities ("Board") approved the Master Third Party Supplier ("TPS") Agreement, version 13 ("TPS Agreement"), to be used by all four of the New Jersey electric distribution companies ("EDCs"), including Public Service Electric & Gas Company ("PSE&G"), Jersey Central Power & Light Company ("JCP&L") formerly GPU Energy, Conectiv Power Delivery ("Conectiv") formerly Conectiv Electric, and Rockland Electric Company ("Rockland"), when entering into a commercial relationship with third party suppliers serving the New Jersey retail electric marketplace in the EDC's service territory. As part of the Third Party Supplier ("TPS") Agreement, certain creditworthiness standards were adopted that must be met by each TPS in order to provide financial protection to the EDCs and their ratepayers.

By way of background, the current TPS Agreement has been used by the EDCs and TPSs since 1999, and its purpose is to protect the EDCs and their ratepayers from the possibility of default by a TPS. However, in response to a concern raised by the retail marketers and due to changes in the retail marketplace and in the way New Jersey procures Basic Generation Service ("BGS"), these creditworthiness provisions no longer accurately reflect current risk to the EDCs.

In 1999, the EDCs were responsible for procuring the supply to meet their BGS requirements. At that time, the EDCs were at risk for a TPS default. The risk involved included the difference between the price per kilowatt hour ("kwh") charged by the EDC and the cost (per kwh) of supplying incremental, unplanned load. Since then, the Board has approved a BGS Auction process for procuring BGS supply and has authorized a Pennsylvania-New Jersey-Maryland Interconnect ("PJM")-based hourly pricing structure for larger customers, which significantly

diverts the default risk away from the EDCs and places it upon the wholesale BGS suppliers. By Order dated May 8, 2003, the Board determined that the present creditworthiness standards found in the TPS Agreement no longer accurately reflect the current level of risk to the EDCs and that the TPS Agreement was in need of amendment. The Board further determined that the TPS Agreement should be updated to remove outdated language and terminology, and also to more accurately portray current market conditions and procurement practices. Therefore, in its May 8, 2003 Order, the Board directed the EDCs to file amended TPS Agreements and Appendices reflecting changes to these areas, for comment by interested parties.

By Order dated June 20, 2003, the Board approved the amended TPS Agreements of PSE&G, JCP&L, Conectiv, and Rockland as filed and ordered the EDCs to post them on their websites. The Board also directed that the EDCs use the amended TPS Agreements when entering into any future commercial relationship with third party suppliers in each EDC's service territory. The Board further directed the EDCs to execute amended TPS Agreements with their current third party suppliers and to process all required TPS documentation, including the TPS Agreement and TPS credit information, in a timely manner.

On July 7, 2003 Strategic Energy L.L.C. ("Strategic") filed with the Board's Secretary, a Motion for Reconsideration of this matter. Strategic specifically asked that the Board reconsider two aspects of its decision. First, it asked the Board to reconsider its decision that approved the section of the amended TPS Agreements, Section 8.2, which requires EDCs to inform all customers that switch suppliers, of a 14-day right to rescission of the change. Instead, Strategic recommended that the amended TPS Agreements and EDC practice should provide that only residential customers be informed that they have a right to rescind a supplier switch. Second, Strategic requested that the Board reconsider its decision adopting the credit and collateral requirements in Appendices B-1 and B-2 of the Amended TPS Agreements, as Strategic believed that these provisions imposed unreasonable and unjust credit and collateral requirements on TPSs. It is Strategic's position that due to the EDCs' reduced risk exposure from the BGS Auction process, that the current TPS credit and collateral requirements unfairly favor the EDCs and make for an uncompetitive market environment.

On July 16, 2003, the EDCs filed a joint response to the Motion with the Board's Secretary. The EDCs recommended that the Motion filed by Strategic be rejected as it is both conceptually and factually flawed. The EDCs maintain that the weakening of the credit requirements for TPSs would affect the BGS suppliers' bidding analysis for the BGS Auction, thus having an adverse effect on the bid price. The EDCs also believe that they must have the ability to call upon appropriate lines of credit to meet the market needs of abandoned TPS customers, in cases where a BGS supplier is not available to provide the additional supply. For these reasons, the EDCs maintain that the credit requirements contained in the TPS Agreement are appropriate.

The EDCs further argued that the elimination of the switching notification for certain customer classes, would lead to a situation where the EDC would learn of a mistaken customer switch request only after it had taken place, thus imposing additional, and needless costs on the customer choice process.

At working group meetings on July 23 and 29, 2003 Staff identified 16 issues, including the rescission language and TPS creditworthiness requirements for third party suppliers serving BGS-FP ("Fixed Price") customers, for further party discussion. These concerns included those raised in Strategic's Motion for Reconsideration.

At its August 18, 2003 Agenda meeting, the Board directed Staff to continue its attempt to resolve these TPS issues through a working group-like process with the industry, and also granted Staff additional time to consider Strategic's Motion, and possibly resolve the matters through the working group.

On August 22, 2003 Staff held another industry meeting to consider the manner and timeline in which to address the previously identified areas of concern. The issues of the TPS Agreement creditworthiness requirements, the rescission language in the TPS Agreement in Section 8.2, and the language in the welcome/rescission letters sent to customers by the EDCs, were identified as the top priorities. At that time, Staff requested informal comments on these two areas from interested parties, via the Board's electronic list server.

Comments on the creditworthiness requirements were received from the Division of the Ratepayer Advocate, Green Mountain Energy Company, Reliant Resources Inc., Strategic Energy L.L.C., Total Gas & Electric, and the Mid-Atlantic Power Supply Association. Comments on the language in the welcome/rescission letters were received from the Division of the Ratepayer Advocate, Constellation NewEnergy Inc., Reliant Resources Inc., Strategic Energy L.L.C., Total Gas & Electric, and the Mid-Atlantic Power Supply Association.

After reviewing the comments, Staff held a conference call with all interested parties on September 30, 2003, to discuss the various parties' positions. The issues concerning the language in section 8.2 of the TPS Agreement concerning which customer classes can rescind their selection of a third party supplier in the 14-day period, and the similar language in the welcome/rescission letters sent out by the EDC, were resolved on this call, although a number of TPSs, including Strategic, would still prefer that all the EDCs provide separate welcome/rescission letters to residential and non-residential customers. The final language was provided to all parties via the Board's electronic list server. However, little progress was made on the TPS creditworthiness requirement issue. Therefore, Staff scheduled a face-to-face conference with all parties, in an attempt to resolve the creditworthiness issue.

On October 8, 2003, Staff held a final meeting on the creditworthiness requirements with all interested participants. All parties presented their final positions for discussion. A consensus was not reached, but all the issues surrounding the credit requirements were fully discussed.

Position of Parties-Strategic Motion

Strategic requests that the Board reconsider its decision to approve the TPS Agreements that allow or require electric distribution companies to inform all customers that switch suppliers, of a 14-day right to rescission of the change. Strategic recommends that section 8.2 of the TPS Agreements and EDCs' welcome/rescission letters should provide that only residential customers be informed that they have a right to rescind a supplier switch. Strategic also requests that the Board reconsider its decision adopting the credit and collateral requirements in Appendices B-1 and B-2 (attached) of the amended TPS Agreements, as Strategic claims these provisions impose unreasonable and unjust credit and collateral requirements on TPSs. Strategic believes that the only financial risk to the EDCs, in case of TPS default, is non-payment for administrative services, meter data information transfer, and other technical services provided by the EDC. Therefore, Strategic recommends that the level of collateral in the TPS Agreement be \$70 per MegaWatt ("MW") of peak load obligation.

The EDCs disagree with Strategic's Motion as both conceptually and factually flawed, and recommend it be denied in its entirety. The EDCs' position is that in sending the switching notice, the EDCs are making no statement about the contractual rights and responsibilities of the customer or the supplier.

The EDCs' position on the credit requirement for TPS suppliers is twofold. First, they claim that weakening of the credit requirements would negatively affect the BGS bidding analysis, causing the bidders to increase their prices to reflect any perceived increase in risk. Second, in a situation where a market event of sufficient severity causes the cancellation of TPS customer contracts, such an event may also affect the performance of the BGS suppliers. Thus, if a BGS supplier is unable to perform and TPSs are canceling customer contracts, and no other BGS supplier is able to fill that BGS provider's tranches and the additional TPS load, then the EDC will be forced to resume its traditional role as provider of last resort. Accordingly, the EDCs argue that the appropriate credit requirements be in effect, so that the EDCs can secure power following the abandonment of those customers.

Position of Parties-Rescission Language in TPS Agreement and Welcome/Rescission Letters

The TPSs that commented on this area recommend clarifying the language in Article 8.2 of the TPS Agreement and in the EDCs welcome/rescission letters to clearly state that the 14-day rescission period is for residential customers only, not for commercial and industrial customers. They also recommend separate letters for residential and non-residential customers.

Position of Parties-Creditworthiness Requirements in TPS Agreement

The Ratepayer Advocate recommends no change to the total level of financial security required under the Board's licensing standards and the TPS Agreement. If the Board decides to reduce the amount of security required in the TPS Agreement, it should increase the amount of security required by the Board's licensing standards.

Green Mountain Energy Co. states that the current level of security required by the TPS Agreement, exceeds the amount of any potential financial risk to the EDCs caused by TPS default. The EDC will usually control the supplier's receivables, which will exceed the amount of any potential financial exposure to the EDC. Therefore, the current security requirements are misaligned with EDC risk, and provide a barrier to competition. Green Mountain Energy Co. did not provide a recommendation on the proper level of collateral.

The Mid-Atlantic Power Supply Assoc. ("MAPSA") recommends the elimination of all requirements for TPSs to post security with the EDCs, as the EDCs are protected by the BGS Agreement. The risk that an EDC might have to serve load resulting from a TPS default or contract expiration is a function of the BGS Agreement and not the TPS Agreement. Accordingly, in the event of a TPS default or contract expiration, the BGS supplier, not the EDC, has the obligation to supply the defaulted TPS customer load.

Reliant Resources, Inc. ("Reliant") originally recommended adjusting the collateral requirements in the TPS Agreement to a level commensurate with the level of risk borne by the EDCs, which is the payment risk of the Supplier Administration Fee (\$25 per MW per month). Reliant later adjusted its position, and now finds that providing collateral equal to 20-days summer peak usage to be understandable based on the 20-day customer enrollment rules. However, Reliant

also states that the \$250,000 surety bond posted to meet the Board's TPS licensing standards and any collateral a TPS posts with PJM ("Pennsylvania-New Jersey-Maryland Interconnect"), should be taken into consideration when determining a TPS' creditworthiness.

Strategic Energy, L.L.C. recommends that there should be no credit obligations imposed on TPSs by the EDCs, except in cases where TPSs dual bill. The EDCs could then establish a maximum credit requirement of the greater of \$1000.00 or \$70 per MW of TPS peak load obligation. This will protect an EDC from a TPS default on charges related to an EDC's administrative services, meter data requests, and other service requests. In the event of a TPS default, the BGS Supplier has the obligation to supply the defaulted TPS customer load, not the EDC. Strategic also states that the \$250,000 surety bond posted to meet the Board's TPS licensing standards and any collateral a TPS posts with PJM, should be taken into consideration when determining a TPS' creditworthiness.

Total Gas & Electric ("TG&E") states that the current creditworthiness provisions are unilaterally over-protective and need to be brought in-line with actual EDC exposure. The EDCs are more than adequately protected by the amount of TPS' receivables they hold, and the EDCs should actually have to post some type of credit requirement with the TPS, to protect the TPS in the event of EDC default.

Staff did not file a formal position.

DISCUSSION AND FINDINGS

The Board agrees with the TPS's concerns that the 14-day rescission period language in the TPS Agreement and the welcome/rescission letters is somewhat confusing, and therefore supports a change in the language in Section 8.2 of the TPS Agreement and the EDCs' welcome/rescission letters to alleviate the confusion.

The Board understands that the risk to the EDCs due to TPS default has been reduced by the current BGS procurement process (BGS Auction). However, if there are not sufficient TPS creditworthiness standards in place, the risk of TPS default lies squarely with the BGS suppliers. The BGS suppliers will deal with this additional risk by increasing their bids in the Auction, thus creating higher BGS prices for ratepayers. The Board believes a fair balance of risk can be achieved by reducing the TPS creditworthiness standards, but not eliminating them.

The current creditworthiness requirements for TPSs are an important aspect of the energy marketplace in New Jersey, and the current requirements help protect ratepayers from TPS default, and provide integrity to the marketplace by allowing only creditworthy participants into the marketplace. The Board also believes that residential and small commercial customers, who lack the sophistication to do their own creditworthiness checks, will assume that some entity, such as the Board and/or the EDC will have provided safeguards to protect them from doing business with TPSs that lack financial viability.

It has been suggested by some parties that EDCs will usually control the third party supplier's receivables, which will exceed the amount of any potential financial exposure to the EDCs in case of TPS default. Thus, this could be used as the creditworthiness standard for TPSs. The

Board has serious concerns about the ability for the EDCs to actually obtain these funds in case of TPS default, for the following reasons: TPSs can use their receivables as a lien against a bank loan, and in case of a default by the TPS, the EDC would have the second lien, or possibly nothing at all; in cases where the TPS provides dual billing, the TPSs are paid directly from their customers, thus the EDC holds no receivables as possible collateral, and; if a TPS defaults, a bankruptcy court may order the EDC to reimburse the receivables to the TPS for power delivered pre-petition for bankruptcy, so other TPS creditors could be paid. Therefore, these uncertainties surrounding the use of TPS receivables as collateral, put ratepayers at risk.

It has also been suggested that the \$250,000 surety bond posted as part of the Board's Licensing Standards, be used as a creditworthiness tool. However, this bond is designed first and foremost to ensure that any outstanding TPS tax obligation or assessment is met, in case of TPS default. It is also designed as a consumer protection device, to insure against a TPS failure to meet contractual commitments to customers to deliver electric generation service.

Also, some parties mentioned creditworthiness protection through PJM's creditworthiness standards. However, PJM's creditworthiness standards are based on how much a TPS purchases from the Spot Market. If they don't make any purchases and they use bilateral contracts or some other agreement, and the power just passes through, there are no credit requirements for the TPS. Even if they do make purchases through the Spot Market, the creditworthiness standards would only protect PJM.

Finally, the Board believes that maintaining a more substantial level of collateral for TPSs, protects credible marketers by keeping unscrupulous marketers, whose actions damage the industry, out of the marketplace.

In its Order of June 20, 2003, the Board clarified that the 14-day rescission period language in the TPS Agreement and the welcome/rescission letters, made no statement about the contractual rights and responsibilities of the customer or supplier. However, the Board understands the TPS's concerns that the language can be somewhat confusing, and therefore FINDS that the language concerning this area in Section 8.2 of the TPS Agreement and the EDCs' welcome/rescission letters should be modified to alleviate the confusion. Therefore, the Board APPROVES the amendments to Section 8.2 of the TPS Agreement and the EDCs' welcome/rescission letters and ORDERS the EDCs to file the amended welcome/rescission letters with the Board. The amended language in these documents will make it clear that only residential customers have the right to rescind their selection of a TPS in the 14-day confirmation period.

The Board also FINDS that the current credit requirement for TPSs found in the TPS Agreement should be reduced from its current level of 60 days of summer peak usage to 30-days of summer peak usage. The 50% reduction represents a reasonable approach to a changing market structure. The 30-day period also is consistent with the Board's policy that TPSs leaving the market give 30-day notice to their customers and the EDC. The Board believes that the change balances a concern with collateral being a financial and entry-level impediment with our interest in providing enough financial assurance for customers and the EDCs that only financially sound entities enter the New Jersey energy marketplace.

As the New Jersey energy market continues to develop the Board DIRECTS Staff to continue to review these creditworthiness standards for adequacy and fairness and, beginning no later than May 1, 2004, to initiate a process to further analyze alternative methodologies for determining the creditworthiness of third party suppliers.

Therefore, the Board DIRECTS that EDCs make the required changes to the existing TPS Agreement by January 15, 2004 and file them with the Board, and immediately thereafter provide the amended TPS Agreements to current Third Party Suppliers, and utilize this amended TPS agreement when entering into any future commercial relationship with a Third Party Supplier in the EDC's service territory. The Board further DIRECTS the EDCs to implement the revised credit standards effective the latter of February 1, 2004 or when the amended TPS Agreement is received from the Third Party Supplier.

Furthermore, the Board DIRECTS that the EDCs modify the welcome/rescission letters to clarify that the fourteen day rescission period does not apply to non-residential customers, and begin utilizing these modified letters within 90 days of the Board Order. The amended letters should be filed with the Board with the amended TPS Agreement.

Finally, to the extent that the aforementioned findings do not adopt the relief requested in Strategic's Motion for Reconsideration, the Board hereby DENIES Strategic's Motion. The concerns raised by Strategic were analyzed by the Board and changes were made to the language in the TPS Agreement, the EDCs' welcome/rescission letters, and to the TPS creditworthiness standards found in the TPS Agreement, considering all the positions of the parties.

DATED: **December 12, 2003**

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY